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UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation on December 5, 2003

**NOTICE OF ACTION TAKEN -- DOCKET OST 2003-16404 - 6**

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: POLYNESIAN LIMITED

Date Filed: October 24, 2003

Relief requested: Exemption from 49 U.S.C. section 40109(g) to permit the applicant to continue to conduct scheduled, combination services between Pago Pago, American Samoa, and Ofu, American Samoa, and between Pago Pago and Ta'u, American Samoa, through January 31, 2004, using 19-seat Twin Otter aircraft.

Applicant representative: Charles F. Donley II, 202-626-6840      DOT analyst: Allen F. Brown, 202-366-2405

Responsive pleadings: Polynesian Limited served its application in this Docket on those U.S. carriers having the potential to conduct these intra-American Samoa services. As noted in our NOAT issued on November 7, 2003, the applicant advised us that, with the exception of Vision Air, no carrier indicated that it had aircraft available to conduct the proposed operations nor otherwise opposed grant of authority through January 31, 2004. Vision Air, on November 7, 2003, filed a pleading in this Docket stating that it was prepared to start inter-island on-demand air taxi service, then went on to say that nothing in its response, "should be construed as a consent to the extension of the requested emergency exemption beyond January 31, 2004."

Supplemental Submission: As noted below, we previously granted a portion of the above request, *i.e.*, through December 8, 2003. See Notice of Action Taken of November 7, 2003, in Docket OST 2003-16404. On December 5, 2003, Polynesian Limited specifically requested that the Department extend its authority 30 days beyond December 8, 2003, asserting that it remains the only carrier holding out scheduled, inter-island services, and that there continues to be a need for these flights.

Statutory Standards: Under 49 U.S.C. section 40109(g), we may authorize a foreign air carrier to carry commercial traffic between U.S. points (*i.e.*, cabotage traffic) under limited circumstances. Specifically, we must find that the authority is required in the public interest; that because of an emergency created by unusual circumstances not arising in the normal course of business the traffic cannot be accommodated by U.S. carriers holding certificates under 49 U.S.C. section 41102; that all possible efforts have been made to place the traffic on U.S. carriers; and that the transportation is necessary to avoid unreasonable hardship to the traffic involved (an additional required finding, concerning emergency transportation during labor disputes, was not relevant here).

**DISPOSITION**

Action: Approved in part, remainder deferred (see below).

Action date: December 5, 2003

Basis for approval: We initially granted Polynesian Limited authority to serve American Samoa for a 30-day period on September 23, 2003, in Docket OST 2003-16163, deferring action on the balance of its request, and, on October 23, 2003, extended the carrier's exemption through November 8, 2003. On November 7, in Docket OST-2003-16404, we extended the subject authority through December 8, 2003, and again deferred action on the balance of its request. We now are granting Polynesian Limited's request in the instant Docket to continue to operate its intra-American Samoa services, using its 19-seat Twin Otter aircraft, for an additional period of 30 days (that is, through January 7, 2004), and are deferring action on the remaining portion of Polynesian's application in this Docket, *i.e.*, to continue this operation through January 31, 2004.

In acting favorably on this unopposed request for extension of emergency cabotage authority, we find that Polynesian Limited's request continues to meet all the relevant criteria of 49 U.S.C. section 40109(g) for the continued grant of an exemption of this type, and that such favorable action still is required in the public interest. In making our initial grant in this matter, on September 23, 2003, we noted that the severe cutbacks in service in the inter-island American Samoa markets by Samoa Aviation, the only U.S. carrier that had been serving the subject markets, clearly constituted an emergency created by unusual circumstances not arising in the normal course of business; that no U.S. appeared able to provide the level of service necessary to meet the needs of American Samoa, and that the authority was necessary to prevent undue hardship to the residents of American Samoa. We find, based on the record, that those determinations remain valid and again warrant extension of this authority, this time through January 7, 2004.

In the circumstances presented, including the fact that the request for extension set forth in Polynesian's December 5 submission was in fact encompassed within the request for authority presented in their previously filed application in this docket, and for which comments already had been received, and in view of the immediate need for continuation of the applicant's service, we believe it in the public interest to proceed without awaiting expiration of the answer period on the December 5 Supplemental Submission.

Finally, we find that the applicant is qualified to perform its proposed operation.

Except to the extent exempted/waived, this authority is subject to our standard exemption conditions.

**Action taken by:**    **Michael W. Reynolds**  
                             Acting Assistant Secretary for  
                             Aviation and International Affairs

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